UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/70
5 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 13 of the provisional agenda

RIGHTS OF THE CHILD

Written statement submitted by the International Human Rights Law Group, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 February 1999]

GE.99-11195 (E)

1. The International Human Rights Law Group (the Law Group) welcomes the resolution of the Commission on Human Rights calling upon States that retain the death penalty A[t]o establish a moratorium on executions, with a view to completely abolishing the death penalty@.

2. The Law Group supports the findings on the mission to the United States of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly N'Diaye. The Law Group also supports the conclusions reached in his report to the Commission, notably his conclusion that the current practice of imposing death sentences and executions of juveniles in the United States violates international law.

3. The United States has been executing persons for juvenile offences since 1642. The youngest child executed in the United States was James Arcene, a Cherokee Indian boy hanged in Arkansas in 1885 for his participation in a robbery and murder at age 10. This century, Fortune Ferguson, an African American youth, was only 13 when he was executed in Florida for rape in 1927.

4. Thirteen persons have been executed for childhood offences in the Amodern era@ of the death penalty, following the United States Supreme Court's reinstatement of the death penalty in 1976. Of the 38 states that authorize the death penalty, 20 states set the minimum age at 16, while four states set the age at 17. The remainder, along with the United States military and the federal Government, establish 18 as the minimum age.

5. This decade, only six countries are known to have executed child offenders: the United States, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen.

6. International human rights instruments unequivocally prohibit use of the death penalty against persons for childhood crimes. The International Covenant on Civil and Political Rights states in article 6.5 that Athe sentence of death shall not be imposed for crimes committed by persons below eighteen years of age@. Article 4 (5) of the American Convention on Human Rights similarly proscribes the juvenile death penalty, as does article 36 (a) of the Convention on the Rights of the Child. The United States is one of only two countries yet to ratify the Convention on the Rights of the Child, partly out of its insistence on imposing the death penalty against children.

7. In March 1987, the Inter-American Commission on Human Rights declared that the United States had violated article 4 of the American Convention by permitting the execution of two juvenile offenders. The Commission held that while the United States had only signed the Convention, it was still bound by the terms of article 4 because the prohibition on imposing the death penalty on children had reached jus cogens status in the Americas.

8. The United States is the only country to have made a formal reservation to article 6.5 of the International Covenant on Civil and Political Rights, specifically reserving the right to impose the death sentence and execute

persons below the age of 18. In reviewing the initial report of the United States, the Human Rights Committee expressed its view that this reservation is incompatible with the object and purpose of the Covenant. Eleven States parties objected to the reservation of the United States to article 6, which is considered to be "non-derogable" under article 4 of the Covenant.

9. In Thompson v. Oklahoma (1988), the United States Supreme Court first addressed whether application of the death penalty on children was "cruel and unusual punishment" under the United States Constitution. The Court reasoned that because "of considerable risk" that the state legislature had not specifically considered whether 15-year-olds should be eligible for the death penalty, it would be unconstitutional to allow a death sentence to stand under the circumstances.

10. In Stanford v. Kentucky (1989), the United States Supreme Court ruled that it was constitutional to impose the death penalty on persons who commit crimes at 16 and 17 years of age. The Court ruled that since a majority of death-sentencing states (25 of 37 at the time) permitted imposition of the death penalty on persons who commit crimes at these ages, there was no constitutional violation.

11. In August 1993, the Criminal Justice Section of the American Bar Association passed a resolution opposing use of the death penalty against persons for crimes they committed under the age of 18. The accompanying report stated that "the notion of a governmental agency imposing the death penalty upon a child through its judicial proceedings raises the deepest questions about the demands of justice versus the special nature of childhood".

12. The Law Group calls attention to three grave trends in the current practice of imposing the death penalty against juvenile offenders in the United States.

13. First, the United States leads the world in executing persons for childhood offences. Of the known executions of persons for juvenile crimes in the 1990s, the United States carried out more such executions than Iran, Pakistan, Yemen, Saudi Arabia and Nigeria combined. The United States was the only country in 1998 to execute people for childhood offences, carrying out three such executions. Since reinstatement of the death penalty in the United States in 1976, no person sentenced to death for a juvenile offence has had his or her sentence commuted.

14. Second, administration of the death penalty against juvenile offenders is racially biased. Of those persons under sentence of death in the United States for offences committed under the age of 18, nearly two thirds (64 per cent) are members of racial minorities (African Americans and Latinos). By contrast, of those persons sentenced to death for adult crimes in the United States, 53 per cent are members of racial minorities (African Americans, Latinos, Asian Americans and American Indians).

15. Third, there is a high prevalence of childhood abuse among persons who are sentenced to death as children. An examination of 14 such individuals revealed long histories of physical and sexual abuse. Most of them also suffered from mental impairment.

16. The Law Group concludes that use of the death penalty against persons for juvenile offences in the United States violates established human rights norms. We ask the United States Government to pass legislation establishing a minimum age for death penalty eligibility, in the same way that the Government has established federal "standards" for age eligibility for alcohol and tobacco consumption. We ask the United Nations Commission on Human Rights to call upon States retaining the death penalty to cease its administration against children.